STATE OF MICHIGAN

COURT OF APPEALS

ADVANCE STEEL COMPANY, Plaintiff-Appellant,	UNPUBLISHED May 10, 2012
v	No. 302724 Oakland Circuit Court
OILFIELD PIPE & SUPPLY, INC., Defendant-Appellee, and	LC No. 2009-101524-CK
SSAB ENTERPRISES, Defendant.	

Before: WILDER, P.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM

In this commercial contract case, plaintiff Advance Steel Company appeals as of right from the trial court's order granting summary disposition to defendant Oilfield Pipe & Supply under MCR 2.116(C)(10) and its order denying reconsideration. On appeal, Advance Steel argues that we should reverse because the trial court erred by finding that Advance Steel's notice of revocation was untimely and that the steel delivered was conforming. We reverse and remand.

I. FACTS

Plaintiff Advance Steel, a Southfield steel trading group, filed this action in June 2009, seeking recovery for Oilfield Pipe & Supply's alleged failure to deliver steel conforming to specifications. Oilfield Pipe & Supply is an Oklahoma company doing business in Michigan. Defendant SSAB Enterprises,[1] a subsidiary of Swedish Steel, manufactured the steel and sold it through SSAB Texas, Inc., a Texas corporation.

[1] SSAB is not a party to this appeal, as the trial court dismissed the claims against it in July 2010.

Advance Steel's June 19, 2008 purchase order, received June 28, specified ".375 x 96.00 x 240.00" steel. Purchase orders from Oilfield Pipe & Supply to SSAB contained the same specifications. The orders were filled and the steel sent, via several shipments through third-party trucking companies, to Houston and Cleveland in July 2008. Advance Steel charged that on July 14, 2008, Oilfield Pipe & Supply and SSAB represented via letter that they had inspected the steel in Texas and that it met all specifications. In reliance on Oilfield Pipe & Supply's representation, Advance Steel paid $237,311.52 on August 1, 2008 ($298,018 total, including freight). However, according to Advance Steel, the steel was not 3/8 x 96 x 240, as agreed and specified. Advance Steel asserted that it notified Oilfield Pipe & Supply of the defects by a debit memo sent April 30, 2009. Advance Steel wrote that the steel was not as represented; it was "underwidth, not prime quality," and had "incorrect markings and mixed width within bundles," and that Advance Steel would be deducting damages from the purchase price. However, Oilfield Pipe & Supply and SSAB refused to compensate Advance Steel for damages.

Therefore, Advance Steel filed suit, alleging that the steel was defective, undersized, improperly marked, and not of prime quality. Advance Steel asserted claims of breach of contract, breach of express and implied warranties, including implied warranty of fitness for a particular purpose, conversion, fraud, tortious interference with business relations, promissory estoppel, unjust enrichment, and refusal to honor the revocation.

Oilfield Pipe & Supply denied all allegations of wrongdoing and breach of contract. Oilfield Pipe & Supply asserted that it had the steel inspected by a third party and confirmed that it was not defective or nonconforming. As affirmative defenses, Oilfield Pipe & Supply stated that waiver and estoppel barred Advance Steel's claims and that Advance Steel did not reject the goods, timely revoke acceptance, or mitigate its alleged damages.

Oilfield Pipe & Supply moved for partial summary disposition, seeking to dismiss the counts dealing with fraud, conversion, and tortious interference. And the parties later stipulated to dismissal of those counts.

SSAB also moved for summary disposition, asserting that it had no contract with Advance Steel. It also asserted that the steel agreed upon was "seconds," that is, steel not meeting exact specifications. It pointed out that the SSAB order acknowledgements referred to the steel as "Seconds." And further, the SSAB invoices to Oilfield Pipe & Supply stated that the goods were "Seconds," sold "as is," without warranties, and not in accord with any recognized specifications.

In response, Advance Steel asserted that its purchase order was for specific steel and that SSAB knew this. According to Advance Steel, at the time it picked up the steel in June 2008, SSAB allegedly made specific representations that the steel met the specifications of the purchase order. Advance Steel argued that the incorrectly marked steel was nearly impossible to sell except for scrap value. Further, Advance Steel maintained that immediately after receiving the incorrect steel, its customer, Temtco Steel, notified it of the nonconformance.

The trial court dismissed Advance Steel's claims against SSAB, finding that, with regard to warranty and revocation claims, there was no contract between these parties and that the steel was sold "as is." On the tortious interference count, the trial court found that there was no

evidence that SSAB knew of a business relationship or interfered with one. Concerning unjust enrichment and promissory estoppel, the trial court found no genuine issue of material fact. The trial court added, "A contract covering the subject at issue exists between Advance Steel and Oilfield Pipe & Supply and payment was received by SSAB from Oilfield Pipe & Supply and not [Advance Steel]." The trial court also found the economic loss doctrine inapplicable.

Advance Steel then filed a first-amended complaint alleging a third-party beneficiary theory against SSAB. SSAB moved for summary disposition seeking dismissal of this claim. SSAB noted that Oilfield Pipe & Supply had admitted that its sales representative, rather than SSAB, had sent a copy of SSAB's order acknowledgement to Advance Steel. The sales representative and another Oilfield Pipe & Supply employee had made handwritten notations on the bills of lading and invoices. SSAB argued that since the steel was sold "as is" to Oilfield Pipe & Supply, Advance Steel had no grounds to claim breach of contract by SSAB's failing to sell particular steel.

Oilfield Pipe & Supply also sought summary disposition against Advance Steel under MCR 2.116(C)(10). Oilfield Pipe & Supply argued that Advance Steel's attempt to revoke acceptance 10 months after payment was unreasonable as a matter of law. Oilfield Pipe & Supply attached the purchase order, SSAB's order acknowledgment, bills of lading, and shipping manifests. According to its sales order with Temtco Steel, Advance Steel had prearranged to sell about $50,000 worth of steel to Temtco Steel with width tolerances of +1 to -1.5, gauge tolerances from .365-.385, and length tolerances to 1.0. Advance Steel owner Robert Stewart had stated that the width tolerance allowed a variance of 94.5 inches to 97 inches. But Temtco Steel complained bitterly, referred to the steel as "junk," and refused to take any more. Advance Steel witness Dan DiCarlo, quality assurance, inside sales, and logistics transportation manager for Advance Steel, testified that Temtco Steel complained that some plates were not of the exact dimensions specified, and thus Advance Steel knew of the "narrow width" issue since June or early July 2008. DiCarlo testified that he would have been to the one to review the bills of lading and shipping manifests. And he admitted that he "didn't quite understand the term seconds"; he stated that the proper term was "secondary steel" to refer to non-prime steel. DiCarlo stated that if Advance Steel had known that any of the steel was under width, Advance Steel would not have paid for it. Stewart also testified that if he knew the size of the material was misrepresented on the order acknowledgement, he would not have approved the purchase. He thought that "the part about seconds doesn't mean anything because we bought it as prime." Stewart admitted that he saw all of the sales orders, and he acknowledged that Advance Steel did not specify "prime steel."

DiCarlo testified that Advance Steel asked its buyer, Robert Newstat, to notify Oilfield Pipe & Supply that the steel was nonconforming, but Newstat apparently did not do this. Newstat kept saying he was taking care of the problem. After this, Advance Steel terminated Newstat.

The parties agreed to have Black Rose Steel, a neutral third party, inspect the steel. Black Rose examined the Texas steel and determined that most plates were the same size or larger than the sizes ordered, but 25 plates were up to 0.5 inch under the 96-inch width. Oilfield Pipe & Supply offered to replace these plates, but Advance Steel did not accept the offer and instead issued its "debit memo" in April 2009, seeking refund for the steel less the amount sold

to Temtco Steel. DiCarlo admitted that Advance Steel had known for 10 months that there were problems with the widths of the steel plates. According to DiCarlo, pieces wider than 96 inches were "okay."

Oilfield Pipe & Supply argued that a letter on its letterhead, dated July 14, 2008, signed by Michael Oglesby (who did not work for Oilfield Pipe & Supply), stating that the steel was inspected and all plates were of uniform dimensions, was not authenticated and did not overcome the fact that Advance Steel knew, from exact measurements provided, its own measurements, the shipping manifests, and the Temtco Steel complaints, that the steel plates were different sizes. Oilfield Pipe & Supply noted that the 15 shipping manifests showed a variance of .383 to .394 in gauge and 95.6 to 96.5 in width for a total of 270 plates of steel, all of which were marked "Seconds." Further, the bills of lading stated exact gauges and widths for each piece. Oilfield Pipe & Supply argued that Advance Steel's revocation of acceptance was not within a reasonable time, as MCL 440.2607(3)(a) and MCL 440.2608(2) require.

Advance Steel responded to Oilfield Pipe & Supply's motion for summary disposition. Advance Steel asserted that the June 19, 2008 purchase order stated specific dimensions and gauges and did not say "secondary" steel. It was established industry practice that a purchaser ordering secondary steel would clearly state this on the purchase order. Oilfield Pipe & Supply's purchase order gave exact specifications—".375 x 96 x 240,"—meaning that the steel must be at least 96 inches wide and meet certain gauge tolerances. Advance Steel never had the steel in its possession. Shortly after it was shipped, the customer notified Advance Steel that the steel was improperly marked, undersized, and not of prime quality or correct specifications.

Advance Steel maintained that Oilfield Pipe & Supply's letter, stating that it inspected the steel in Texas and found it met specifications, was false and misrepresented the result of the inspection. This was confirmed when Black Rose inspected the steel. Black Rose found the steel under width, improperly marked, not of prime quality, and not meeting gauge specifications. Oilfield Pipe & Supply then offered to replace the underwidth plates with plates of "3/8" x 96" x 240."" However, Oilfield Pipe & Supply rescinded its offer before Advance Steel could reply. Oilfield Pipe & Supply stated that the steel was within industry tolerances, but Advance Steel argued that there is no such thing as industry tolerances. Further, Advance Steel later discovered that every sheet of steel was stamped with incorrect specifications and labeled "prime." These mistakes also devalued the steel. Advance Steel could not resell the steel, and it remains in storage.

Advance Steel sought damages proximately caused by Oilfield Pipe & Supply's breach, including lost sales and future sales; lost profits; harm to reputation, goodwill, and consumer relationships; loss of market advantage and business opportunities; and attorney fees and costs. Advance Steel asserted that genuine issues of material fact existed with regard to whether it gave notice of breach to Oilfield Pipe & Supply or revoked acceptance within a reasonable time. Advance Steel argued that it never accepted any goods knowing that they were nonconforming and rejected the goods as soon as it learned of the nonconformance. Advance Steel argued that it gave proper notice that the steel did not conform to the purchase order pursuant to MCL 440.2607(3) and was entitled to the remedies under MCL 440.2607(1). Advance Steel further argued that Oilfield Pipe & Supply's assertion that there was no evidence of attempt to reject or revoke until April 2009, was untrue and involved disputed issues of fact. According to Advance

Steel, it in fact notified Oilfield Pipe & Supply that the steel was nonconforming immediately after the last shipment on July 3, 2008, and after receiving the customer complaint and shipping manifests. Thus, Advance Steel argued, its notice was within a few days and timely under MCL 440.2597(3)(a). But Oilfield Pipe & Supply then gave false assurances that the steel conformed to Advance Steel's purchase order. The purchase order specifications of 3/8 x 96 x 240 unambiguously defined the terms of the agreement and did not mention "industry tolerances" or "Seconds." Advance Steel argued that it reasonably relied on the July 14, 2008 letter. Advance Steel never inspected the steel or had possession of it. Advance Steel asserted that the tolerances stated in the Temtco Steel-Advance Steel purchase order did not control the Oilfield Pipe & Supply-Advance Steel contract, which included no tolerances. If there were well-accepted tolerances, there would be no reason to state them on a purchase order. Advance Steel therefore contended that it was entitled to summary disposition under MCR 2.116(I)(2).

After hearing oral arguments on the motion, the trial court found no genuine issue of material fact and granted summary disposition to Oilfield Pipe & Supply under MCR 2.116(C)(10). The trial court found that Advance Steel "had notice almost immediately that the steel did not conform exactly to the specifications set forth in the purchase order." But the trial court found that "Seconds" are nonprime steel and that the order acknowledgment specifically stated "Seconds" and contained a warranty disclaimer. According to the trial court, any variations, with the possible exception of the 25 plates, "conformed closely enough to the purchase order by industry standards." The trial court pointed to gauge and width tolerances in the Temtco Steel-Advance Steel contract and also to Black Rose's determination that most of the order comported with Advance Steel's specifications. Thus, the trial court ruled, "Since "the steel cannot be found to be nonconf[o]rming, Oilfield did not breach its contract with [Advance Steel], nor has it breached any warranties."

Advance Steel moved for reconsideration, but the trial court denied the motion. The trial court found that the court had applied the appropriate standard[2] and that Advance Steel's motion contained no new meritorious arguments. The trial court stated that Oilfield Pipe & Supply "presented documentary evidence in its motion for summary disposition indicating that the goods were being sold as 'Seconds' and without any warranties."

Advance Steel now appeals.

II. JURISDICTIONAL CHALLENGE

In the "Statement of Jurisdiction" section of Oilfield Pipe & Supply's brief, it asserts that this Court lacks jurisdiction over this matter because Advance Steel filed this appeal more than 21 days after the trial court entered its final order granting summary disposition. Under MCR 7.204(A)(1) an appeal of right must be filed within 21 days after entry of the order being appealed from or within 21 days after entry of an order deciding a timely filed motion for post-judgment relief. Here, on September 20, 2011, Advance Steel timely moved for reconsideration of the trial court order granting summary disposition. The trial court denied the motion for

[2] Judge Colleen O'Brien replaced Judge McDonald for this phase of the lower court proceedings.

reconsideration on February 13, 2011. Advance Steel then filed its claim of appeal on February 22, 2011—within 21 days after the trial court's order deciding the timely filed motion for post-judgment relief. Therefore, Advance Steel's claim of appeal was timely.

Oilfield Pipe & Supply also claims that Advance Steel's appeal was improperly docketed because Advance Steel failed to serve Oilfield Pipe & Supply with its motion for reconsideration. This may well be true. The September 20, 2010 notice of hearing and proof of service for the motion for reconsideration list three attorneys, including Advance Steel's current and former attorneys and SSAB's attorney, but not Oilfield Pipe & Supply's attorney. The proof of service states that the motion was served "upon all Parties of record at the addresses listed above." Thus, it is possible that Advance Steel did neglect to serve Oilfield Pipe & Supply or its attorney.

However, Oilfield Pipe & Supply's attorney acknowledges that he did receive the order denying reconsideration. Moreover, a review of the trial court register of actions reveals that, after receiving the order denying reconsideration, Oilfield Pipe & Supply took no action in the trial court to challenge service. Nor did Oilfield Pipe & Supply raise this issue with this Court until Advance Steel filed its brief.

In any event, even assuming that Oilfield Pipe & Supply was not served with the motion for reconsideration, that fact does not divest this Court of jurisdiction in this matter. Again, as indicated above, a motion for reconsideration was timely filed in this matter, and the appeal was filed within 21 days after entry of the order denying the motion for reconsideration. Therefore, this Court has jurisdiction over this appeal.

III. MOTION FOR SUMMARY DISPOSITION

A. STANDARD OF REVIEW

Advance Steel argues that reversal is required because the trial court erred by finding that its notice of revocation was untimely and that the steel delivered was conforming. Advance Steel contends that the determination of what constitutes a reasonable time is for the jury to decide, and, here, Advance Steel notified Oilfield Pipe & Supply that the steel was nonconforming before July 14, 2008.

Motions for summary disposition under MCR 2.116(C)(10) test the factual sufficiency of the complaint and must be supported by affidavits, depositions, admissions, or documentary evidence.[3] The nonmoving party must then provide evidence of specific facts showing a genuine issue of material fact.[4] Granting the nonmoving party the benefit of any reasonable doubt regarding material facts, the court must decide if a factual dispute exists to require a trial.[5] The

[3] MCR 2.116(G)(3)(b); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994).

[4] *Slatterly v Madiol*, 257 Mich App 242, 249; 668 NW2d 154 (2003).

[5] *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

trial court may not make factual findings or weigh credibility and must consider all documentary evidence in the light most favorable to the party opposing the motion.[6] Courts are liberal in finding a factual dispute sufficient to withstand summary disposition.[7] This Court reviews de novo rulings on summary disposition, as well as issues of law and statutory and court rule construction.[8]

B. TIMELINESS OF NOTICE OF REVOCATION

The trial court evaluated Advance Steel's claims under the Uniform Commercial Code (UCC).[9] Pursuant to MCL 440.2607(3)(a),[10] a buyer who accepts a tender must notify the seller of any breach within a reasonable time. Here, Advance Steel claimed that it never accepted the steel, or in any case notified Oilfield Pipe & Supply promptly that the steel was nonconforming. On these points, there are genuine issues of material fact on which reasonable minds could differ.

The July 14, 2008 letter on Oilfield Pipe & Supply's letterhead suggests that Oilfield Pipe & Supply did have notice of the Advance Steel's complaints. And contrary to Oilfield Pipe & Supply's assertion, DiCarlo and Stewart did not state that Advance Steel never notified Oilfield Pipe & Supply of defects or nonconformities. Oilfield Pipe & Supply is correct that a party may not "contrive factual issues merely by asserting the contrary in an affidavit after having given damaging testimony in a deposition[.]"[11] But here, the issue of fact was already created by the testimony that Temtco Steel complained that the steel was nonconforming and of poor quality, and Advance Steel then asked to have the steel inspected. A buyer may revoke acceptance if it accepted on the reasonable assumption that the defect would be cured, or without discovery if acceptance was reasonably induced by the difficulty of discovering the defects before

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[6] *Id.*; *DeBrow v Century 21 Great Lakes*, 463 Mich 534, 538-539; 620 NW2d 836 (2001).

[7] *Porter v Royal Oak*, 214 Mich App 478, 484; 542 NW2d 905 (1995).

[8] *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 566-567; 702 NW2d 539 (2005).

[9] MCL 440.1101 *et seq.*

[10] MCL 440.2607(3) provides:

> Where a tender has been accepted
>
> (a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy . . . .

[11] *Kaufman and Payton, PC, v Nikkila*, 200 Mich App 250, 256-257; 503 NW2d 728 (1993). Accord, *Griffith v Brant*, 177 Mich App 583, 587-588; 442 NW2d 652 (1989).

acceptance, or by the seller's assurances.[12] A seller's attempts to cure are relevant in determining if the buyer gave notice of revocation within a reasonable time.[13]

Further, under MCL 440.2608, where the discovery of a defect is delayed because the seller expressly assures the buyer that the goods are of good quality, the question of delay in revocation may be a question of fact.[14] In *Birkner v Purdon*, the defendant buyer said that it ordered "Number One" Christmas trees, which were of good quality.[15] However, when the shipment came, the trees were flattened and were not the expected quality.[16] This Court upheld judgment for the buyer, finding that the delay in notice of 27 days was a question of fact because of the seller's assurances and the difficulty of discovering the defects.[17] In the present case, the July 14, 2008 letter assured Advance Steel that the steel was conforming. What is a reasonable time to notify of intention to rescind or revoke differs according to the circumstances of the case.[18] Thus, we conclude that there are questions of fact regarding the timeliness of the notice.

We also conclude that there are genuine issues of material fact regarding whether there was a meeting of the minds. The goal in contract interpretation is to honor the parties' intention and enforce the contract according to its plain terms.[19] In this case, DiCarlo and Stewart testified that the contract was for "prime" and not "secondary" steel. The Advance Steel purchase order of June 19, 2008 supports this. It called for steel "Clean and Flat. Sold by Chemistry," stated "certification required," and added, "We will not accept steel with large center buckles or belled edges" and that "All steel shall conform to gauge tolerances, surface standards, and be of good shape." The order continued, "In the event we run into lamination, pickle patch, scale, multi-gauge, or severe flatness problems, we will automatically seek an adjustment . . . ." The SSAB order acknowledgement to Oilfield Pipe & Supply then stated the minimum gauge as .365 inches and the maximum as .405 inches. It contained the word "SECONDS" and the handwritten note, "Why seconds." Neither DiCarlo nor Stewart admitted making this notation. But nowhere is there testimony, an affidavit, written industry standards, or other evidence from Oilfield Pipe & Supply that "Seconds" means "secondary steel" and would allow for the types of nonconformities found by Temtco Steel. Thus, the trial court was deciding a disputed issue of fact by finding that the contract called for "Seconds" and (apparently) that the types of problems Temtco Steel found could have come with secondary steel but not prime steel. In any event,

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[12] MCL 440.2608; see *Head v Phillips Camper Sales and Rental, Inc*, 234 Mich App 94, 106; 593 NW2d 595 (1999).

[13] *Head*, 234 Mich App at 106.

[14] *Birkner v Purdon*, 27 Mich App 476, 481-482; 183 NW2d 598 (1970).

[15] *Id.* at 478.

[16] *Id.* at 479, 482.

[17] *Id.* at 481-482.

[18] *MacLaren v Dermody White Truck Co*, 9 Mich App 402, 405-407; 157 NW2d 459 (1968).

[19] *Davis v LaFontaine Motors, Inc*, 271 Mich App 68, 74; 719 NW2d 890 (2006).

DiCarlo testified that right away his employees reported size variances and told Advance Steel's buyer to contact Oilfield Pipe & Supply. Stewart merely said that he never contacted Oilfield Pipe & Supply and, as far as he knew, Advance Steel had no direct contact with Oilfield Pipe & Supply after the loads were picked up. That Advance Steel depended on its buyer or broker to contact Oilfield Pipe & Supply should not defeat its claim.

The trial court quoted the "as is" clause in the SSAB order acknowledgments, but did not specifically rule on its effect. Instead, the trial court found that the goods were not nonconforming, and thus Oilfield Pipe & Supply could not be found to have breached any warranties. If goods are sold "as is," the buyer "'"takes the entire risk as to the quality of the goods."'"[20] DiCarlo did receive SSAB order acknowledgments. And the size and gauge variances would have been known to Advance Steel because of the SSAB shipping manifests. Also, Advance Steel's June 25, 2008 sales order to Temtco Steel listed gauge tolerances of .365-.385 and width tolerances of 1-1.5 inches. These do not prove, but do suggest, that Advance Steel may have been aware of width and gauge variations. Every contract does carry an implied warranty of merchantability unless excluded or modified[21] and may carry an implied warranty of fitness for a particular purpose. This warranty may also be excluded or modified.[22] Language to exclude or modify warranties must be conspicuous.[23]

Both parties cite *LaVilla Fair v Lewis Carpet Mills, Inc*.[24] In *LaVilla*, the buyer ordered lots of carpet "of first quality (no seconds)."[25] The carpet was sent in different lots and stored for nine months but was clearly nonconforming in color, texture, size, unmatched dye lots, material, and quality. Testimony showed that there was no set time in the industry to inspect rolls of carpet; this carpet remained in storage because the apartment builder was not ready to receive it. Also, the defects were difficult to discover. The trial court held that a nine-month delay, and even unrolling and cutting some of the carpet, did not constitute acceptance as a matter of law.[26] Here, the April 2009 Black Rose inspection found not only a size issue but salt and pepper pitting on half of the pieces. Oilfield Pipe & Supply claimed that the salt and pepper rust resulted from Advance Steel's storage. But this is also a question of fact. Oilfield Pipe & Supply offered to replace the 25 plates under 96-inch width with 3/8 x 96 x 240. In any event, Stewart testified and stated in his affidavit that the steel was improperly marked "Prime Steel" and this also impaired its value.

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[20] *Id.* at 82, quoting 1 White and Summers, Uniform Commercial Code (4th Ed), § 8-4, pp 456-457, quoting Comment 7 to UCC 2-316.

[21] MCL 440.2314(1).

[22] MCL 440.2315.

[23] MCL 440.2316(2); *Davis v LaFontaine Motors*, 271 Mich App at 76.

[24] *LaVilla Fair v Lewis Carpet Mills, Inc*, 548 P2d 825 (Kan 1976).

[25] *Id*. at 828.

[26] *Id*. at 830-832.

Oilfield Pipe & Supply's cites several cases indicating that delays in revoking acceptance preclude a buyer's recovery.[27] For example, in *Page v Sagebrush Sales Co*,[28] the defendant accepted a lumber shipment and sold part to a customer who said it was defective after one or two months. After four months, the defendant notified the seller. The trial court stated that when the defendant did not express dissatisfaction or attempt to return the lumber earlier, the notice was not within a reasonable time.[29] Only one conclusion was possible from the facts.[30] The evidence here suggests, in contrast, that more than one conclusion was possible from the facts and that the trial court erred in granting summary disposition to Oilfield Pipe & Supply. There were genuine issues of material fact concerning the existence of a contract, its terms, whether Advance Steel accepted, whether Oilfield Pipe & Supply or its agent misled Advance Steel into accepting, and whether Advance Steel waited too long to realize and notify Oilfield Pipe & Supply that the steel was nonconforming (if it was, aside from the 25 under-width plates). Consequently, summary disposition was inappropriate, and the trial court reversibly erred in granting summary disposition to Oilfield Pipe & Supply under MCR 2.116(C)(10).

We reverse and remand for further proceedings. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ William C. Whitbeck

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[27] See *Delta Tanning Corp v Samber Leather Fashions, Inc*, 654 F Supp 1285, 1287 (SD NY 1987) (stating that a six-month delay is unreasonable as a matter of law); *Smith-Moore v Heil Co*, 603 F Supp 354, 356, 358 (ED Va 1985) (stating that seven months is not within a reasonable time; the question is one of law only if the facts are undisputed); *Larsen Leasing, Inc v SME Leasing, Inc*, 1988 WL 489590 (WD Mich 1988) (stating that a five-to-seven month delay is unreasonable).

[28] *Pace v Sagebrush Sales Co*, 560 P2d 789, 792 (Ariz 1977).

[29] *Id.*

[30] *Id.*